TAN KWANG JOO

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
AP RAJAH J
[MAGISTRATE'S APPEAL NOS. 236 AND 264 OF 1988]
21 APRIL 1989

CRIMINAL PROCEDURE: *Corruption - Appeal against a conviction on a charge of corruption under s. 6(a) of the Prevention of Corruption Act and penalty imposed under s. 13 of the said Act - Whether such penalty can be imposed in respect of a sum which the appellant did not receive, accept or obtain for himself.*

The appellant was tried and convicted in the Subordinate Courts on the following charge:

> You, Tan Kwang Joo, are charged that you on a day in May or June 1986 in Singapore, being an agent, namely, a clerk-of-works in the employ of the Housing and Development Board, did corruptly obtain a gratification, to wit, a tiling work subcontract at Bukit Timah contract I valued at $226,027.41 from Sim Lian Construction Co (Pte) Ltd for Star-Tile General Contractor as an inducement to refrain from showing disfavour, in relation to your principal's affairs, to wit, by not causing unnecessary difficulties in your supervision of the construction of 5 blocks of flats under Bukit Timah Contract I undertaken by Sim Lian Construction Co (Pte) Ltd and you have thereby committed an offence punishable under s. 6(a) of the Prevention of Corruption Act (Cap 104).

The appellant was sentenced to a fine of $5,000 and in default thereof five months' imprisonment and also imposed a penalty of $226,027.41 to be paid to the state within one month and in default thereof twelve months' imprisonment. The appellant paid the fine but the payment of the penalty of $226,027.41 was stayed pending the outcome of the appeal.

The appellant being dissatisfied with the conviction and imposition of the said penalty appeal against them.

Held:

[1] The Court relying largely for guidance on the case of (*PP v. Datuk Harun bin Haji Idris* (No. 2) [1977] 1 MLJ 15) agreed with what the learned trial Judge had said in regard to the guilt and conviction of the appellant; the appeal in this regard is therefore dismissed.

[2] It was not in dispute that the appellant personally did not receive the said sum of $226,027.41 or any part of it. Section 13(1) of the said Act was intended to prevent corrupt wrong-doers from keeping or benefitting from the spoils of their crimes. It cannot be imagined that the legislature even intended that in similar circumstances such as these, a convicted accused had to be called upon to pay a penalty in respect of a sum which he himself, clearly did not receive, accept or obtain for himself. The trial Judge's order in respect of the penalty is set aside and the appeal on the penalty imposed is allowed.

[Appeal against conviction dismissed. Appeal against penalty imposed allowed.]

Cases referred to:
PP v. Datuk Haji Harun bin Haji Idris (No 2) [1977] 1 MLJ 15

Legislation referred to:
Prevention of Corruption Act (Cap 104) [Sing], ss, 6(a), 13(1)

JUDGMENT

AP Rajah J:

The appellant was tried in the Subordinate Courts on the following charge:

> You, Tan Kwang Joo, are charged that you on a day in May or June 1986 in Singapore, being an agent, namely,a clerk-of-works in the employ of the Housing and Development Board, did corruptly obtain a gratification, to wit, a tiling work subcontract at Bukit Timah contract I valued at $226,027.41 from Sim Lian Construction Co (Pte) Ltd for Star-Tile General Contractor as an inducement to refrain from showing disfavour, in relation to your principal's affairs, to wit, by not causing unnecessary difficulties, in your supervision of the construction of 5 blocks of flats under Bukit Timah Contract I undertaken by Sim Lian Construction Co (Pte) Ltd and you have thereby committed an offence punishable under s. 6(a) of the Prevention of Corruption Act (Cap 104).

At the conclusion of the hearing on 8 July 1988, the learned District Judge convicted the appellant and on 23 July 1988 sentenced him to a fine of $5,000 and in default thereof five months' imprisonment. He also imposed a penalty of $226,027.41 to be paid to the State within one month from 23 July 1988 and in default thereof twelve months' imprisonment.

The appellant has been on bail and the fine of $5,000 on the conviction has been paid. The payment of the penalty of $226,027.41 has been stayed pending the outcome of this appeal pursuant to an order of the then learned Judicial Commissioner Mr. Chan Sek Keong in the High Court.

The appellant being dissatisfied with the conviction and the imposition of the said penalty has appealed against them.

I have considered very carefully the arguments and submissions of learned Counsel for the appellant and in considering them I have relied largely for guidance on the case of the *PP v. Datuk Haji Harun bin Haji Idris* (No. 2) [1977] 1 MLJ 15 in which the accused was charged with three charges of corruption and in which it was alleged that he as Mentri Besar, Selangor, (a) solicited the sum of $250,000 for UMNO as an inducement to obtain the approval of the Executive Council in respect of an application for a piece of State land; (b) being a member of a public body accepted on or about 16 August 1972 for UMNO the sum of $25,000 as an inducement to obtain such approval; (c) accepted for UMNO on or about 27 March 1973 the sum of $225,000 as an inducement to obtain such approval. I consider this the leading case on the Prevention of Corruption Act, the relevant provisions of which are in *pari materia* with ours, in so far as the particular sections with which we are concerned in the appeal. Justice Raja Azlan in his judgment said that in order to establish a charge under the section the prosecution must prove (1) that the accused is a member of Government of the State of Selangor; (2) that on or between the dates mentioned in the charge he solicited for UMNO a gratification of $250,000; (3) that the circumstances in which the gratification was solicited give rise beyond reasonable doubt to an inference that it was solicited corruptly and (4) that the accused solicited the gratification as an inducement to obtain approval of the Executive Council in respect of the bank's application. Under the third requirement, namely, that the circumstances in which gratification was solicited give rise to the inference that it was solicited corruptly, he, on the question of what is corrupt, says:

> 'Corrupt' means 'doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions.' (See *Kheng Kooi v. Reg.*) 'purposely doing an act which the law forbids' (see *R v. Smith*). 'Corrupt' is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then

he is liable under the section, Thus, if the accused used his position to solicit gratification with a guilty mind, he is caught within the ambit of the section. The real point is whether there is soliciting a political donation with a corrupt intention.

In our case the fact that the appellant, in breach of his instructions by his employer, the Housing and Development Board, failed to report to the architect on the site that the sub-contractor was his brother-in-law is a relevant consideration in determining the question of corrupt intention. I find myself in agreement with what the learned trial Judge has said in regard to the guilt and conviction of the appellant; the appeal in this regard is therefore dismissed.

This is an appeal both on conviction and the penalty imposed on the appellant under s. 13(1) of the Act. On the matter of the penalty I am at variance with the learned trial Judge's views on the said section. In my view the section unequivocally and clearly concerns itself only with the situation "where a Court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act." Here the appellant was convicted of obtaining a gratification for Star Tile General Contractor. It is not in dispute that the appellant personally did not receive the said sum of $226,027.41 or any part of it. This section in my view was intended to prevent corrupt wrong-doers from keeping or benefitting from the spoils of their crimes. I cannot imagine that the legislature ever intended that in similar circumstances such as these, a convicted accused had to be called upon to pay a penalty in respect of a sum which he himself clearly did not receive, accept or obtain for himself. The trial Judge's order in respect of the penalty is set aside and the appeal on the penalty imposed is allowed.

Also found at [1989] 2 CLJ 923